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ALEXANDER L. STEVAS,

No. 84-1141

In the Supreme Court of the United States

OCTOBER TERM, 1984

MICHAEL HOLLAND, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the search of two rented motor homes, which were used solely for transportation purposes and were stopped while in transit on the highway, was not justified under the "automobile exception" to the Fourth Amendment's warrant requirement.

Petitioners were convicted in the United States District Court for the Middle District of Florida, following the acceptance of their conditional guilty pleas, on one count of conspiracy to possess with intent to distribute over 1000 pounds of marijuana, in violation of 21 U.S.C. 846, and one count of the substantive offense, in violation of 21 U.S.C. 841(a)(1), and 18 U.S.C. 2. Petitioner Michael Holland was sentenced to concurrent terms of eight years' imprisonment on each count. Petitioner Lawrence Holland was sentenced to concurrent terms of five years' imprisonment on each count. Petitioners Arnold Holland and Paul Murphy were

each sentenced to concurrent terms of three years' imprisonment on each count. The court of appeals affirmed (Pet. App. A1-A11).

1. The facts adduced at the suppression hearing established that an informant, who had been arrested after one pound of marijuana was discovered in his car, told authorities that he had bought the marijuana with money given to him by Aaron Holland, the brother of three of the petitioners. The informant further stated that he had distributed marijuana for Holland before and that Holland had recently approached him about transporting a large quantity of marijuana. Telephone calls by the informant to Holland, which were monitored with the informant's consent, confirmed that a drug deal was about to take place. Thereafter, police observed two rented Winnebago motor homes arrive at Holland's home. Pet. App. A2-A3; Tr. 6-15.

In the early morning hours of March 15, 1983, the two motor homes, followed by a jeep and a van, left the Holland residence and traveled south to Fort Myers, Florida. Surveillance agents following the vehicles observed that several times during the nighttime journey the vehicles would pull off the road to wait for several minutes before resuming their trip, leading the agents to surmise that the travelers were trying to detect or avoid surveillance. All four vehicles stopped at a truck stop in Haines City, Florida, for about half an hour, and, at about 5:00 a.m., the travelers stopped at a Holiday Inn in Lake Placid, where they parked all four vehicles and rented two motel rooms. Tr. 18-24.

At about 10:30 that morning, four people left the two motel rooms and continued their journey. Agents were able to identify three of the four men as petitioners Michael Holland, Arnold Holland, and Paul Murphy. The four vehicles were followed to the Ramada Airport Hotel in Fort Myers, Florida. The jeep and the van were parked in the

hotel parking lot, and the two Winnebagos were parked in the parking lot of the shopping center across the street (Tr. 22-24). Later that day the agents learned that petitioner Michael Holland had rented a motel room (Tr. 31).

That afternoon, one of the motor homes departed and followed a light-colored Ford Truck to a residence on Ellis Road in Fort Myers. The truck returned to the motel, and two people entered the Ramada Inn. Meanwhile, a conversation between the informant and Aaron Holland, which was monitored with the informant's consent, confirmed that a drug transaction was in progress. That same evening, agents observed the second motor home and the jeep travel to the Ellis Road residence; the jeep later returned to the Ramada Inn. The next morning, March 16, 1983, the four men left the motel and returned to the Ellis Road address where the motor homes were parked. Tr. 25-32.

In the afternoon, agents saw the motor homes leave the Ellis Road residence. They noticed that the motor homes were riding lower in the rear and weaving around on the road. The windows of the vehicles, previously closed, were now open. The police stopped the motor homes and discovered inside almost 1500 pounds of marijuana. The van and the jeep were also stopped; several handguns and a small quantity of marijuana were found. Petitioners, each driving one of the four vehicles, were all arrested. Tr. 35-40; Pet. App. A4.

2. Petitioners moved to suppress, arguing that the police lacked probable cause to support the search of the vehicles.[1] The district court denied the motion (Tr. 179-182), concluding that, in the circumstances presented, a magistrate

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[1]Petitioners conceded in the district court that the automobile exception applied (citing *United States* v. *Ross*, 456 U.S. 798 (1982) as the controlling authority), and argued only that probable cause was lacking (see Tr. 158-164, 179).

"clearly would not have hesitated to issue a warrant" (Tr. 182).

The court of appeals affirmed (Pet. App. A1-A11). Petitioners argued for the first time on appeal that the automobile exception could not be invoked to justify the search of the motor homes, on the theory that such vehicles should enjoy the same Fourth Amendment protection as a fixed residence.[2] The court of appeals rejected this argument, holding that because the motor homes in this case were being used solely for transportation purposes, *i.e.*, as trucks, petitioners could not claim that they enjoyed the same expectation of privacy as in a home (*id.* at A6-A10).

3. Petitioners contend (Pet. 10-22) that the court of appeals erred in holding that the warrantless search of the motor homes in this case was justified under the "automobile exception." They contend that this case presents the same question that is currently before this Court in *California* v. *Carney*, No. 83-859 (argued Oct. 30, 1984). Because petitioners have shown no cause for their failure to seek suppression on this ground in the district court prior to trial, the claim is waived. Fed. R. Crim. P. 12. See *United States* v. *Braunig*, 553 F.2d 777, 780 (2d Cir.), cert. denied, 431 U.S. 959 (1977). In any event, as the court of appeals correctly held (Pet. App. A7), the decision in *Carney* will have no effect on the proper resolution of this case.

In *Carney*, the California Supreme Court held that the warrantless search of the motor home in that case violated the Fourth Amendment. *People* v. *Carney*, 34 Cal.3d 597, 668 P.2d 807, 194 Cal. Rptr. 500 (1983). The facts in that case were quite different from those presented here. The

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[2]The government pointed out that petitioners had conceded the applicability of the automobile exception in the district court, but the court of appeals nonetheless addressed the issue.

motor home in *Carney* was not stopped in transit, but was searched while it was parked, and the circumstances indicated that it was being used, at least to some extent, for purposes other than transportation. By contrast, the motor homes here were stopped by the police while they were in transit on the highway.[3] Moreover, because of their surveillance, the officers knew that petitioners were sleeping in motel rooms and therefore that the motor homes were not being used as residences, but rather just as large trucks. When they stopped the Winnebagos, the officers knew that the vehicles had been rented, driven from the Holland residence to another city, parked in commercial parking lots while petitioners rented motel rooms, and were apparently in the process of beginning the return trip loaded with cargo.[4]

Even assuming arguendo that a motor home, because of its specialized construction and intended use, should ordinarily be afforded the constitutional protections of a dwelling, such a rule surely should not apply when it is apparent that the motor home is not being used even temporarily as a place to live, but rather solely as a large-capacity means of transport. In such a situation, none of the privacy considerations that might make a motor home more akin to a

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[3]Even the defendant in *Carney* acknowledged that the automobile exception probably ought to apply when the motor home is stopped on the highway. See Resp. Br., No. 83-859, at 28, 32-33, 35.

[4]As we argued in our brief as amicus curiae in *Carney*, we believe that the motor home in that case was also subject to warrantless search. The motor home was parked downtown in a public parking lot, and the facts did not indicate that it was being used even temporarily as a fixed residence. Even if *Carney* is affirmed, however, there is no reason not to apply the automobile exception in a case like this one, where it was clear to the officers that the motor home was being used solely for transportation.

residence than to a vehicle are applicable. Thus, as petitioners themselves assumed in the district court, the motor homes in this case should be treated just like any other vehicle for Fourth Amendment purposes, and the warrantless searches based on probable cause were valid.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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